

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: David J. Cornell, II : Case No. 13-52510
 Elena L. Syrkin : Chapter 13
 : Judge Caldwell

OBJECTION TO DEBTORS' MOTION TO MODIFY CHAPTER 13 PLAN

(DOC. #41)

Now comes Frank M. Pees, Chapter 13 Trustee herein, and hereby objects to the Debtors' Motion to Modify Chapter 13 Plan filed on October 3, 2013 (**Doc. #41**). The Debtors are proposing to surrender the 2007 Yamaha ATV that is currently secured by a lien to Capital One N.A. Debtor proposes to surrender the property with any remaining deficiency balance being treated as a general unsecured Class 5 claim.

Debtors' proposed modified Plan treatment is in direct conflict with the Sixth Circuit Court of Appeals decision in the matter of In re: Nolan, 232 F.3d 528 (2000). In Nolan, the Sixth Circuit held that a debtor cannot modify a plan under 1329(a) to surrender the collateral to a creditor and propose to pay the balance of the secured claim as a general unsecured claim. Id., at 535, citing In re: Coleman, 231 B.R. 397, at 398.

Accordingly, the Trustee objects to the Debtors' Motion to Modify Chapter 13 Plan.

Respectfully submitted,

/s/ Frank M. Pees

Frank M. Pees
Chapter 13 Trustee
130 East Wilson Bridge Road, Suite # 200
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CERTIFICATE OF SERVICE

Frank M. Pees, Trustee, certifies that on this _9th_ day of October, 2013 a copy of this Objection was served on the following registered ECF participants, **electronically**, through the court's ECF System at the email address registered with the court:

US Trustee
Frank M. Pees
Donald E. Wood

and on the following by **ordinary U.S. Mail** addressed to:

David J. Cornell, II
Elena L. Syrkin
429 Willow Run Drive
Pickerington, OH 43147

/s/ Frank M. Pees
Frank M. Pees
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